

*In the Matter of Bryan Kopsic, Correction Officer Recruit (S9999K),
Department of Corrections
CSC Docket No. 2011-4314
(Civil Service Commission, decided September 7, 2011)*

Bryan Kopsic appeals the attached decision of the Division of State and Local Operations (SLO), which upheld the removal of his name from the Correction Officer Recruit (S9999K), Department of Corrections, eligible list due to his falsification of his employment application.

The appellant appeared on the Correction Officer Recruit (S9999K) eligible list, which was certified to the appointing authority on January 12, 2009. The appointing authority requested the removal of the appellant's name based on his falsification of his employment application. Specifically, the appointing authority asserted that the appellant failed to disclose an arrest for fighting on July 6, 1986.¹ In support, the appointing authority enclosed a charge disposition inquiry which indicated that the appellant pled guilty to Point Pleasant Beach Fighting and Assault Ordinance 3-29 and was fined \$254 plus costs for a total of \$275.² However, in response to Question 43 on his employment application, "Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction?" the appellant answered "No."

On appeal to SLO, the appellant stated that he did not commit the offense as he would have been only two years old at the time of the offense. He submitted his birth certificate showing his birth date in support of his contention. However, SLO found that the appointing authority had sufficiently supported and documented its decision to remove the appellant's name from the eligible list.

On appeal to the Civil Service Commission (Commission), the appellant alleges that he was improperly removed from the eligible list for an arrest that never occurred. He reiterates that no such incident occurred when he was two years old. He also submits the results from a search of the Master Fingerprint File of the New Jersey State Police, Identification and Information Technology Section, dated April 19, 2011, which did not reveal any criminal record.

In response, the appointing authority reiterates its position and asserts that an eligible may be denied appointment for other sufficient reasons. The appointing authority contends that it is imperative that appointed candidates exhibit respect

¹ A review of the record indicates that the appointing authority sent a corrected letter indicating that the actual date of arrest was July 6, 2006. While the appointing authority issued the corrected letter, it does not appear that the appellant received it.

² Specifically, the ordinance states "Fighting is hereby prohibited within the Borough of Point Pleasant Beach, Ocean County. Fighting shall be defined as quarreling, brawling or otherwise misbehaving in a disorderly manner as to disturb the public peace in a public place."

for the law to ensure effective management of the day-to-day operations of a prison system and that the appellant's actions are in contradiction to that expectation.

It is noted that a review of the appellant's application indicates that he answered "Yes" in response to Question 51 which reads, "Have you ever been arrested or charged with a violation of the Disorderly Persons Offense Act, City or Local Ordinance?" The appellant disclosed that he was arrested in June 2006 by a Point Pleasant Beach Police Officer and received a "misbehaving" ticket for reenacting a movie role. He was found guilty and paid a fine and costs totaling \$275.

Further, it is noted that the Correction Officer Recruit (S9999K) list expired on June 9, 2011.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an eligible's name from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. Moreover, *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment. In this regard, it is recognized that a Correction Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966); *See also, In re Phillips*, 117 *N.J.* 567 (1990). The public expects Correction Officers to present a background that exhibits respect for the law and rules. Finally, *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appellant is alleging that his name should be restored to the eligible list because he did not falsify his employment application. Initially, the appointing authority erroneously listed the date of the appellant's arrest for fighting as July 6, 1986 instead of the actual date of July 6, **2006**. While it does not appear that the appellant was aware of this error and his arguments on appeal focus on the date of the offense and his age at that time, he also presents evidence that he has no criminal record. However, the error would not be clear to

the appellant since he did reveal the 2006 arrest on his employment application. Specifically, the appellant answered “Yes” to Question 51 which asked if he had “ever been arrested or charged with a violation of the Disorderly Persons Offense Act, City or Local Ordinance.” In explanation, he stated that he received a “misbehaving” ticket for reenacting a movie role. He also detailed the date, location and disposition on the offense in the box below the question on his employment application. The evidence submitted by the appointing authority reveals that the appellant was arrested for violating Point Pleasant Beach Ordinance 3-29 for “Fighting,” pled guilty and was ordered to pay a total fine of \$275, all of which match the appellant’s description on his employment application. It is clear that the appellant did not falsify his employment application with regard to the disclosure of the 2006 arrest. Accordingly, the appellant has shown by the preponderance of the evidence that his name should be restored to the Correction Officer Recruit (S9999K), Department of Corrections, eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correction Officer Recruit (S9999K), Department of Corrections be revived and the appellant’s name certified at the time of the next certification for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.